



U.S. Department of Justice

Immigration and Naturalization Service

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OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

FILE: [REDACTED] Office: El Paso

Date:

SEP 19 2000

IN RE: Obligor:
Bonded Alien:

IMMIGRATION BOND

IN BEHALF OF OBLIGOR: Self-represented

INSTRUCTIONS:

Public Copy


This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of \$110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS


Terrence M. O'Reilly, Director
Administrative Appeals Office

Identifying data deleted to
prevent clearly unwarranted
invasion of personal privacy

DISCUSSION: The delivery bond in this matter was declared breached by the District Director, El Paso, Texas, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be sustained.

The record indicates that on October 5, 1998 the obligor posted a \$1,500 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 2, 1999 was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of the Immigration and Naturalization Service (the Service) for removal at 2:00 p.m. on October 12, 1999 at [REDACTED]. The obligor failed to present the alien, and the alien failed to appear as required. On March 1, 2000, the district director informed the obligor that the delivery bond had been breached.

On appeal, the obligor asserts that the district director erred in breaching the bond because: (1) he did not send all notices in connection with the bond, (2) he did not comply with the terms and provisions of 8 C.F.R. 103.5a requiring personal service and (3) he did not notify the obligor of the alien's scheduled hearing.

On appeal, the obligor states that the alien's attorney filed a stay of deportation and did not receive a denial notice until February 23, 2000.

8 C.F.R. 241.6 provides in pertinent part that neither the request for a stay of deportation or removal or the failure to receive notice of disposition of the request shall delay removal or relieve the alien from strict compliance with any outstanding notice to surrender for deportation or removal.

Delivery bonds are violated if the obligor fails to cause the bonded alien to be produced or to produce himself/herself to an immigration officer or immigration judge upon each and every written request until removal proceedings are finally terminated, or until the alien is actually accepted by the immigration officer for detention or removal. Matter of Smith, 16 I&N Dec. 146 (Reg. Comm. 1977).

The regulations provide that an obligor shall be released from liability where there has been "substantial performance" of all conditions imposed by the terms of the bond. 8 C.F.R. 103.6(c)(3). A bond is breached when there has been a substantial violation of the stipulated conditions of the bond. 8 C.F.R. 103.6(e).

8 C.F.R. 103.5a(a)(2) provides that personal service may be effected by any of the following:

- (i) Delivery of a copy personally;
- (ii) Delivery of a copy at a person's dwelling house or usual place of abode by leaving it with some person of suitable age and discretion;

(iii) Delivery of a copy at the office of an attorney or other person including a corporation, by leaving it with a person in charge;

(iv) Mailing a copy by certified or registered mail, return receipt requested, addressed to a person at his last known address.

The bond (Form I-352) provides in pertinent part that the obligor "agrees that any notice to him/her in connection with this bond may be accomplished by mail directed to him/her at the above address." In this case, the Form I-352 listed 105 North Florence Street, El Paso, TX 79901 as the obligor's address.

Contained in the record is a certified mail receipt which indicates that the Notice to Deliver Alien was sent to the obligor at [REDACTED] on September 2, 1999. This notice demanded that the obligor produce the bonded alien for removal on October 12, 1999. The receipt also indicates the obligor received notice to produce the bonded alien on September 8, 1999. Consequently, the record clearly establishes that the district director properly served notice on the obligor in compliance with 8 C.F.R. 103.5a(a)(2)(iv).

Furthermore, it is clear from the language used in the bond agreement that the obligor shall cause the alien to be produced or the alien shall produce himself to a Service officer upon each and every request of such officer until removal proceedings are either finally terminated or the alien is accepted by the Service for detention or removal. The bond agreement is silent as to any requirement compelling the Service to notify the obligor of all bond-related matters, despite the obligor's assertion to the contrary. Similarly, neither the statute, the regulations, nor administrative case law provide support for the obligor's allegation that the Service is required to notify the obligor of all bond-related matters.

The obligor claims that the Service is statutorily precluded from declaring the bond breached because the Service's authority to enforce the bonded alien's departure expired, six months from the date of the final order of removal as provided under former § 242(c) of the Act, 8 U.S.C. 1252(c).

Section 241(a)(1) of the Act, 8 U.S.C. 1231(a)(1), was added by § 305 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and was effective on April 1, 1997. It superseded former § 242(c) of the Act, 8 U.S.C. 1252(c), and changed the six-month period of time to 90 days.

Section 241(a). DETENTION, RELEASE, AND REMOVAL OF ALIENS ORDERED REMOVED.-

(1) REMOVAL PERIOD.-

(A) IN GENERAL.-Except as otherwise provided in this section, when an alien is ordered removed, the Attorney General shall remove the alien from the United States within a period of 90 days (in this section referred to as the "removal period").

(B) The removal period begins on the latest of the following:

(i) The date the order of removal becomes administratively final.

(ii) If the removal order is judicially reviewed and if a court orders a stay of the removal of the alien, the date of the court's final order.

(iii) If the alien is detained or confined (except under an immigration process), the date the alien is released from detention or confinement.

(C) The removal period shall be extended beyond a period of 90 days and the alien may remain in detention during such extended period if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure or conspires or acts to prevent the alien's removal subject to an order of removal.

The Service record shows that removal proceedings were held on January 19, 1999 and the alien was ordered removed to Mexico. On July 14, 1999, the Board of Immigration Appeals determined that the immigration judge's decision is accordingly now final. The Service then sent the notice to surrender on September 2, 1999 and within 90-day period after the order of removal became administratively final. Thus, satisfying the regulation at 8 C.F.R. 241(a)(1)(B)(i).

The statute giving the Attorney General authority to detain an alien for a period of 90 days from the date of final order of removal for the purpose of effecting removal was intended to give the Attorney General 90 unhampered days within which to effect removal. Bartholomeu v. INS, 487 F. Supp. 315 (D. Md. 1980).

Pursuant to the [REDACTED] entered into on June 22, 1995 by the Service and [REDACTED] the Service agreed that a properly completed questionnaire would be attached to all Form I-340s (Notices to Surrender) going to the obligor on a surety bond. The failure to attach the questionnaire would result in rescission of any breach related to that Form I-340. A properly completed questionnaire must include a copy of any picture of the alien found in the Service file.

Based on the provisions of the [REDACTED] and the fact that the record fails to show that a properly completed questionnaire was sent to the obligor, the appeal will be sustained. The district

director's decision declaring the bond breached will be rescinded and the bond will be continued in full force and effect.

ORDER: The appeal is sustained. The district director's decision declaring the bond breached is rescinded and the bond is continued in full force and effect.